

IN THE MATTER OF	:	BEFORE THE
ROBERT A. and JOANNE L. MEAD	:	HOWARD COUNTY
t/a MEAD TREE	:	
AND TURF CARE, INC.	:	BOARD OF APPEALS
Petitioners	:	HEARING EXAMINER
	:	BA Case No. 06-031C

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DECISION AND ORDER

On October 4, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Robert A. and Joanne L. Mead, t/a Mead Tree and Turf Care, Inc., Petitioners, for a conditional use for a landscape contractor operation in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District, filed pursuant to Sections 131.N.31 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Thomas M. Meachum, Esquire, represented the Petitioners. Robert A. Mead and George Chandler testified in support of the petition. Robert Jefferson testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find the following facts:

1. The subject property, known as 3316 Hipsley Mill Road, is located in the 4th Election District on the north side of Hipsley Mill Road about 1,000 feet west of Jennings Chapel Road in Woodbine, Maryland (the "Property"). The Property is referenced on Tax Map 20, Grid 3, as Parcel 40.

2. The Property consists of 11.7 acres that is irregular in shape. The Property has about 615 feet of frontage on Hipsley Mill Road. The front half of the Property is about 615 feet wide, while the rear half is about 315 feet wide. The east side of the Property is about 1,127 feet deep while the west side is about 543 feet deep. The rear lot line has 315 feet of frontage on Jones Road.

The Property is currently improved with several buildings of varying sizes. A 6,800 square foot metal frame building is located in the center of the Property about 525 feet from Hipsley Mill Road and 20 feet from west lot line. A 1,450 square foot metal frame structure is situated immediately east of this building. About 50 feet to the southeast of these buildings is a 51.6' by 16' structure labeled as an "open shelter" on the conditional use plan. About 100 feet to the southwest is a 1,600 square foot metal frame building that is identified as the Petitioners' personal woodworking shop. A dumpster is located at the center of the Site between the parking area and open shelter.

Two residential dwellings are located on the Property: a 3,200 square foot one-story home is situated in the southwest portion of the lot, and a 1,280 square foot mobile home is located in the central portion of the Property about 57 feet from the east lot line. Both of these dwellings are excluded from the proposed conditional use.

Access to the site is gained via a 450-foot long asphalt paved driveway that begins about 250 feet east of the southwest corner of the lot and extends northwest toward the east side of the woodworking shop. A parking and circulation area is located at the end of the driveway, east of the woodworking shop, and in front of the 6,800 square foot metal building. Truck parking for landscape contractors is located in front of the open shelter and in a gravel area northwest of the

mobile home. This latter truck parking area is more than 100 feet from the east side lot line.¹

Most of the southeast portion of the Property is used for growing nursery stock. A roughly 100' by 75' area in the center of the Property, located about 275 feet from Hipsley Mill Road, is designated for mulch and woodchip storage. The bulk of the rear portion of the Property is designated as a nursery planting area.

An extensive mixed evergreen tree and hedge buffer, about 350 feet long and 40 feet wide, is located along the Hipsley Mill Road frontage east of the driveway. In addition, landscape buffers are located along the road frontage in front of the residential dwelling and along the west, northwest, and east side lot lines. A row of pine trees bisects the southern portion of the Property west of the mulch and woodchip storage area. Large deciduous trees are planted south of the large metal frame building and parking area. The Jones Road frontage at the rear of the Property is buffered by a dense row of leyland cypress trees. There is no vehicular access to Jones Road.

3. Vicinal properties are also zoned RC-DEO and include:

(a) To the north of the Property across Jones Road is a residential lot with a two-story single-family detached dwelling.

(b) To the east are two properties improved with single-family detached dwellings.

(c) To the south across Hipsley Mill Road are three parcels improved with single-family detached dwellings located at least 160 feet from the roadway.

(d) To the west of the Property are two parcels improved with single-family detached

¹ The conditional use plan shows that the gravel area extends to less than 100 feet from the east side lot line, but that the truck parking spaces are more than 100 feet from the lot line. The Petitioners indicated that only that portion of the gravel area that is more than 100 feet from the lot line will be used for the conditional use.

dwellings.

4. The Petitioner proposes to use a 1.5-acre portion of the Property, as delineated on the conditional use plan (the “Conditional Use Site”), for a landscape contracting business. A nursery and landscape contracting business has existed on the Property since the 1960’s. The majority of the Property is used for growing nursery stock. The landscape contracting operation will involve the storage and loading of supplies such as mulch, chips, logs, wood products, topsoil, seed, straw, fertilizer and pesticides. Vehicles and equipment will include 18 trucks, trailers, brush clippers, stump grinders, and three loaders. Routine vehicle maintenance and minor repairs will be performed on site. No retail sales will take place on the Site. The operation will include an office with no more than three office employees. Other employees (up to 32) of the business will report in the mornings, park their vehicles, leave the Site in the morning and return in the evenings. The business will operate on weekdays between 7:00 a.m. and 5:00 p.m. No business signs or outdoor lighting are proposed.

5. The Property is served by private water and septic facilities. The 2000 General Plan designates the Property as “Rural Conservation.” Hipsley Mill Road is a local road with two travel lanes within a variable width right-of-way and a posted speed limit of 30 miles per hour. Visibility from the existing driveway is more than 300 feet in each direction.

6. Mr. Mead testified that he has owned the Property and operated a wholesale nursery and landscape contractor business for 12 years. He stated that employees typically arrive between 6:30 and 7:30 in the morning, go off-site, and then return between 3:00 and 4:00 in the afternoon. The business is operated on Saturdays only in emergency situations. He stated that the 1,600 square foot

woodworking shop is not part of the landscaping business. The only noise generated is the occasional backing up signal from trucks. He noted that, while the plan indicates that the 100' landscape contractor setback line runs through 6,800 square foot metal building, those portions of the building within the setback area will be used for the nursery business and not the landscape contracting operation. The plan indicates that only the eastern portion of the building will be used as the landscape contractor office.

7. Mr. Jefferson testified that the use generates excessive noise and traffic.

8. Mr. Chandler, who lives directly east of the Property, testified that the use has not generated any excessive noise.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B).

A. General Plan: The Howard County General Plan designates the area in which the Property is located as "Rural Conservation." The proposed use, while a commercial one, is typically found in rural areas and in conjunction with wholesale nursery operations (a permitted use). The use will occur on only 1.5 acres of an 11.7-acre Property. Except for brief periods in the morning and afternoon, the use will be of relatively low intensity. The Site has access to a local road. Accordingly, the nature and intensity of the operation, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district,

in accordance with Section 131.B.1.a.

B. Adverse Effect: Section 131.B.2 of the Zoning Regulations requires me to determine whether the proposed use at the Site will have adverse effects on vicinal properties above and beyond those ordinarily associated with such use. Virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed landscape contractor operation use has adverse effects in the RC zone. The proper question is whether those adverse effects are greater at the proposed site than they would be generally elsewhere within the RC district.

The Petitioners have met their burden in presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with a landscape contracting business in the RC district:

1. Physical Conditions. The proposal consists of the operation of a landscape contracting business within a 1.5-acre portion of the 11.7-acre Property. The proposed use involves primarily the storage of supplies and equipment as well as equipment repair. Activity on the site will occur primarily in the mornings and evenings, when no more than 35 employees will come onto and leave the site. At other times, only three employees will work out of an office. No retail sales will take place on Site and no outdoor lighting is proposed. While some noise and dust may be generated by the use of trucks and the loading of materials, these effects are inherent in and typical of a landscape contracting use. There has been no showing that the effects of this particular use at this site will be

inordinate. What's more, any noise and must will be mitigated by the extensive landscape buffering at the perimeters and interior of the site. Consequently, the use will not generate excessive noise, dust, fumes odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with a landscape contracting operation in an RC zoning district, in accordance with Section 131.B.2.a.

2. Structures and Landscaping. The proposed use will not involve the construction of any new structures on the site. The Conditional Use Site is centrally located on the Property and will consist of several buildings no more than one story tall. The buildings will be located several hundred feet from Hipsley Mill Road. Trees and hedges screen the south side of the buildings, the material storage area, and the entire perimeter of the Property. Consequently, the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, in compliance with Section 131.B.2.b of the Zoning Regulations.

3. Parking and Drives. The Petitioner proposes that vehicles will use the existing paved driveway and parking areas at the center of the Conditional Use Site. The driveway and parking areas are well separated from vicinal properties. The parking areas are screened from the south by trees. A dumpster, located at the center of the Site between the parking area and open shelter, will be adequately screened by distance and landscaping. Consequently, parking areas and driveways will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties as required by Section 131.B.2.c.

4. Safe Access. The existing paved driveway provides safe access and has adequate sight distance. Consequently, the proposed driveway provides adequate ingress and egress to the Property, as required by Section 131.B.2.d.

II. Specific Criteria for Landscape Contractor Operation (Section 131.N.31).

1. The proposed use will be conducted within the 11.7-acre Property. The site is at least 5 acres in accordance with Section 131.N.31.a.

2. All structures and uses including parking, driveways, and storage areas are at least 100 feet from lot lines, well in excess of the minimum of 50 feet required by Section 131.N.31.b.

3. The operation will be centrally located on the 11.7-acre Property and well separated from neighboring properties. Any noise, dust or fumes created by the operation will occur during short periods of the mornings and evenings and during any equipment repairs, and will not be greater than ordinarily found in landscape contractor operations. The location and design of the operation will therefore not cause a nuisance to neighboring properties due to noise, dust or fumes as required by Section 131.N.31.c.

4. No sales are proposed. Buildings used for storage and offices are no more than 1,450 square feet in area and one story tall. The buildings are well separated from vicinal properties by distance and are screened on all sides by trees and hedges. Consequently, they are screened and compatible in scale and character with other residential or agricultural structures in the vicinity. No new structures or additions are proposed. The petition therefore complies with Section 131.N.31.d.

5. Section 131.N.31.e applies only to retail nurseries and greenhouses and does not apply to this petition.

6. With respect to the requirements of Section 131.N.31.f:

a. The proposed operation does not meet the requirements of Section 128.C.2 and is therefore not a home-based contractor. The conditional use application is therefore appropriate.

b. The buildings and outdoor areas for parking, loading and storage of vehicles, equipment tools and supplies are delineated on the conditional use plan and located more than 100 feet from lot lines and public roads, as required by Section 131.N.31.f(2).

c. Outdoor parking and storage areas are well separated from neighboring properties and roads and screened by trees, in accordance with Section 131.N.31.f(3).

d. The Petitioners propose to make minor repairs to vehicles and equipment on site. Section 131.N.31.f(4) requires that such repairs take place inside a building. Body work, engine rebuilding, engine reconditioning, painting and similar activities are not permitted. Provided the Petitioners makes only minor repairs within a building, this requirement will be met.

III. Opposition Testimony.

Once a petitioner presents sufficient evidence establishing that its proposed use meets the requirements of the statute, even including that it has attached to it some inherent adverse impact, it is then incumbent upon those opposed to the petition to show that the use at the proposed location would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone. *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995). While the party in opposition in this case expressed concerns about the potential impact of the use of the property, the evidence placed before me does not sufficiently demonstrate any adverse effects unique or different

than those ordinarily associated with a landscape contracting business in the RC district.

The testimony presented by those in opposition amounted only to unsupported opinions and general conclusions that the operation will cause increases in noise and traffic in the area. Maryland courts instruct that the unsupported conclusions or fears of witnesses to the effect that a proposed use of property will or will not result in harm amount to nothing more than vague and general expressions of opinion which are lacking in probative value. *Anderson v. Sawyer*, 23 Md. App. 612, 329 A.2d 716 (1974). Because the Opposition's testimony in this case was unsupported by any evidence that the anticipated harmful effects are likely to occur, I must afford it no weight. Moreover, even if I were to credit this testimony, the Opposition failed to show that these risks will impact this community to any greater extent than other communities in the RC0 zone. In other words, the Opposition failed to present any evidence that any adverse effects would be unique or different from those ordinarily associated with a landscape contracting business.

What's more, the testimony of Mr. Chandler, the next-door neighbor, that the use has not generated any excessive noise, directly contradicts Mr. Jefferson's testimony. Consequently, I find that the use at the proposed location will not cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone.

ORDER

Based upon the foregoing, it is this **9th** day of **November 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Robert A. and Joanne L. Mead, t/a Mead Tree and Turf Care, Inc., for a conditional use for a landscape contractor operation in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District is hereby **GRANTED**;

Provided, however, that the conditional use will apply only to the uses and structures as described in the petition and conditional use plan submitted and not to any other activities, uses, structures, or additions on the Property and **subject to the following condition**:

1. The Petitioners may make only minor repairs to vehicles or equipment, which must take place inside a building. Body work, engine rebuilding, engine reconditioning, painting and similar activities are not permitted.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.